

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JOE DON SHERROD,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-09-0727-F
)	
EVERETTE VAN HOESEN,)	
)	
Defendant.)	

ORDER

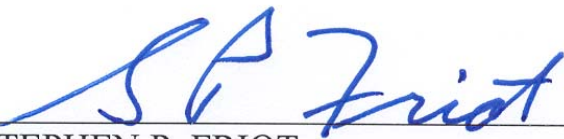
Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis* whose pleadings are liberally construed, brings this action pursuant to 42 U.S.C. § 1983 seeking redress for alleged violations of his civil and constitutional rights. The July 26, 2010 Report and Recommendation of Magistrate Judge Valerie K. Couch (doc. no. 41) recommends that plaintiff's motion for appointment of counsel (doc. no. 26) be denied, that plaintiff's motion for class action status (doc. no. 30) be denied, and that defendant's motion for summary judgment (doc. no. 38) be granted. The Report advises that any objection to the Report must be filed by August 16, 2010, and that failure to make timely objection to the Report waives the right to appellate review of factual and legal issues addressed in the Report. No objection to the Report has been filed, and no request for an extension of time within to file such an objection has been sought.¹

¹The Report was returned to the court as undeliverable to plaintiff, as was an earlier order of the Magistrate Judge. Both filings were mailed to plaintiff's address of record, the Kay County Detention Center. It appears, therefore, that plaintiff is no longer incarcerated at the KCDC. He has not, however, filed a notice of change of address.

Having conducted its own review, and with there being no objection, the court finds that it agrees with the Report. It further finds that no purpose would be served by stating any further analysis here.

Accordingly, the Report and Recommendation of Magistrate Judge Couch is **ACCEPTED, ADOPTED** and **AFFIRMED** in its entirety. Plaintiff's motion for appointment of counsel is **DENIED** and plaintiff's motion for class action status is **DENIED**. Defendants' motion for summary judgment is **GRANTED** as follows. Defendant is granted summary judgment in its favor on the claim raised in count I. Defendant is also granted judgment on counts II and III, but these counts are not adjudicated on their merits; rather, counts II and III are dismissed without prejudice based on plaintiff's failure to exhaust his administrative remedies.

Dated this 17th day of August, 2010.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE